

# NEVADA COUNTY TRANSPORTATION COMMISSION

## Minutes of Meeting

January 17, 2007

A meeting of the Nevada County Transportation Commission (NCTC) was held on Wednesday, January 17, 2007 in the City of Nevada City Council Chambers, 317 Broad Street, Nevada City, California. The meeting was scheduled for 8:30 a.m.

Members Present: Nate Beason, Tim Brady, Sally Harris, Grass Valley Alternate Dan Miller, John Spencer, Russ Steele, and Josh Susman

Staff Present: Dan Landon, Executive Director; Nancy Holman, Administrative Services Officer; Toni Perry, Administrative Assistant

Standing Orders: Vice Chairman Beason convened the Nevada County Transportation Commission meeting at 8:30 a.m.

Pledge of Allegiance

### ACTION ITEMS:

#### 11. Election of Officers

Commissioner Steele requested the first order of business be to elect officers for 2007. The Commissioners agreed to this action. Vice Chairman Beason opened the nomination for Chairman. Commissioner Steele nominated Commissioner Nate Beason for the position of Chairman. Commissioner Susman seconded the motion. There were no further nominations and nominations were closed. The motion passed unanimously.

Chairman Beason opened the nomination for Vice Chairman. Commissioner Spencer nominated Commissioner Sally Harris for the position of Vice Chairman. Commissioner Steele seconded the motion. There were no further nominations and nominations were closed. The motion passed unanimously.

1. Closed Session: Pursuant to Government Code Section 54957, Employee Performance Evaluation of the Executive Director, Daniel B. Landon.

Chairman Beason announced the commencement of a closed session at 8:35 a.m. The Commissioners and Executive Director Landon went into a private conference room.

Chairman Beason reconvened the NCTC meeting at 9:15 a.m. in the Council chambers, after conducting a discussion with the Executive Director. There was no reportable action.

### INFORMATIONAL ITEMS

#### 2. Financial Reports

- A. October and November 2006

There was no discussion on the Financial Reports. Commissioner Harris moved to accept the financial reports. Commissioner Susman seconded the motion. The motion passed unanimously.

B. Regional Transportation Mitigation Fee Program Fund Annual Report for FY 2005/06.

Executive Director Landon reported that under Government Code Section 66000 any agency that has a mitigation fee program is required to give an annual report. He said the NCTC acts as a broker for the regional fee program, and provides the information in this report to each jurisdiction on a yearly basis to allow them to make their required reports. The information represents the program as of June 30, 2006. There were no questions regarding the annual report. Commissioner Brady commented that he is looking forward to the new regional update in June 2007.

3. Correspondence

A. Email from Virginia S. Moran - Request that her listing of wildlife crossing websites be shared with the Commission. 11/19/06, File 1200.4.

Chairman Beason noted the comments in this letter from Ms. Moran and the websites listed that give information on animal crossings. He questioned whether the issue of animal crossings is addressed in the planning process of the widening project on SR 49 at La Barr Meadows Road. Executive Director Landon responded that he was sure they will be part of the considerations in the Environmental Document.

B. Citizens Concerned About Traffic (CCAT) Memo - "Subject: Continuing Traffic Deaths on Highway 49 and the Inability of Our Governments to Resolve the Issue." 12/4/06, File 490.6.1.

Chairman Beason referenced the letter from CCAT and said he thought it was a little inflammatory. He brought attention to quotes from the letter, such as: "Head-on traffic accidents continue to occur on Hwy. 49 between Auburn and Grass Valley, with no prospect of significant solutions in the near future," and "the inability of our governments to resolve the issue." Chairman Beason said he personally and professionally found that statement to be out of order. He said this letter referred to a CCAT letter that was discussed at the September 2006 NCTC meeting and he noted that the September letter contained misinformation about the accident rate on SR 49. It was his opinion that it would be helpful if CCAT would be more constructive in their inputs. Commissioner Susman shared the Chairman's opinions and said it was not a proactive letter. He felt that the writer was either misinformed or did not have all the information. He said if the person would choose to be informed and choose to be supportive, they could be participatory towards a solution, but the tone of this letter does not give the indication that they are moving in that direction. Chairman Beason said the government at many different levels is working on this problem, and there is no quick and easy solution.

Commissioner Brady said he was proud to see how quickly the NCTC responded to the issues brought forward by the SR 49 South County Concerned Citizens group, and also how quickly Caltrans reacted with the SHOPP (State Highway Operations and Protection Program) funds to install the rumble strip. He has seen the rumble strip used on two other major highways: The highway off of I-80 into Napa has had great success, and there is a rumble strip along SR 35 from Marin County to 880. He appreciated CCAT's proposed solution to safety and asked if Winder

Bajwa, or another representative from Caltrans, would comment on the cable barrier system at our next NCTC meeting. He said that the information provided referred to a cable system tested in Missouri and he would like to know if there has been any success in the State of California using the cable barrier system. If there is some merit to the system, and it falls within the budget for the widening of SR 49, Commissioner Brady thinks it is prudent for the Commission to hear a report on the system.

Commissioner Steele mentioned that any barrier system along SR 49 has to contend with having openings for the approximate 145 driveways along the highway. Chairman Beason said there are many problems with the cable systems. Commissioner Spencer stated that Caltrans has already addressed why a cable system would not work, why a concrete barrier would not work, and the only option currently is the rumble strip. He commented that the system does not work in this situation because of the width of the highway. Chairman Beason said he would entertain a brief overview on this subject at the next NCTC meeting, especially since there are new Commissioners. Commissioner Harris stated she liked the idea of a brief overview on SR 49. Staff was directed to request Caltrans provide information at the March 21<sup>st</sup> NCTC meeting.

Chairman Beason stated the reason he brought up the letter from CCAT was because he thinks it is important for public officials when they get misinformation, whether it comes from the podium addressing the Commission or in writing, that they not just accept it. He said if they think the information is incorrect, it needs to be stated in the record, because the public deserves the right to know that there is information circulating that is not always correct.

#### 4. Status Report on the Nevada County Economic Resource Council

Commissioner Steele gave a brief status report on NCTC's membership with the Economic Resource Council (ERC), and mentioned that Item 3D in Correspondence included their minutes from the previous meeting. He said the report given by the Airport Manager initiated a discussion on the Loma Rica Development Plan that is underway at the County. One of the issues discussed was the single highway access to the airport, and at a future date that could become an NCTC issue. Commissioner Steele reported that the Nevada City Technology Park is also a major industrial area that only has one access point. He commented that from an economic and safety standpoint, those could be issues the Commission will need to address in the future.

#### 5. Executive Director's Report

##### 5.1 NCTC Projects in the STIP

Chairman Beason opened the discussion to entertain questions for Executive Director Landon. Commissioner Susman announced that Caltrans will give the Truckee Town Council a presentation on the SR 89 Mousehole project on February 15<sup>th</sup>. The plan is for the Town Council to review and discuss all the alternatives and choose the most suitable alternative, in an effort to move the project forward. He said that in seeking funding for regional/statewide projects like the Mousehole, Truckee is taking care to insure that they do not compete with, or rob local funds from, projects like the Dorsey Drive Interchange.

Commissioner Brady reiterated that the Regional Transportation Mitigation Fee (RTMF) Update project is an "A-1" priority for the NCTC. He noted that the Executive Director's Report stated that staff was awaiting the final commercial land use data from the City of Grass Valley. He would like

to see that expedited in any way possible, so the RTMF Update project can move forward. Executive Director Landon reported that since the writing of the Executive Director's Report the City staff had delivered a report containing their 2030 land use data. Mike Woodman, Transportation Planner for NCTC, and Rod McConnell, Transportation Planner for the Nevada County Department of Transportation and Sanitation, are reviewing the data and they will meet with the City of Grass Valley staff on January 18<sup>th</sup> to ensure that the data is correctly understood. Mr. Landon stated he was hopeful that within a few days the data would be sorted out and they would move forward to provide it to the consulting team to start the modeling effort.

Chairman Beason said the data was delayed two to three months, and he questioned if the project was still on task and if the consultants were still agreeable to the new timeline caused by the delay. Executive Director Landon said the timeline is tight and the next milestone is to get the modeling completed by the consultant. Mr. Landon has confirmation from the consultant that this will be a priority project once they receive the data, and they believe within three weeks from the date they get the information, the data will be turned around. Mr. Landon believes there is the ability to bring the project back on schedule; currently it is about six weeks delayed, but three weeks can be gained back when the modeling is completed ahead of the agreed schedule. Commissioner Harris said, given the importance of the RTMF update, she would like to get a report at each NCTC meeting to be current on the status of the update project. She would like the bimonthly updates to include if the project is on schedule, if there are road blocks, any issues being uncovered as the project progresses, and anything the Commission can do to help the timely completion of the project.

## 6. Caltrans District 3

### A. Project Status Report – Winder Bajwa, Caltrans Project Manager for Nevada County.

Mr. Bajwa gave a brief summary of project activity that has occurred since the last NCTC meeting.

- *Safety Realignment and Widening of SR 20* – The project starts at the Yuba County line and goes to just east of Oak Canyon Drive, and \$26 million is programmed for construction. The project was awarded to Granite Construction and construction will be starting this month. Mr. Bajwa said it will be a two season project and will improve safety through the project corridor. He provided handouts announcing an Open House public outreach informational session on January 25<sup>th</sup> in Penn Valley. Caltrans will display the design of the project in stages, and traffic management plans to be used during the construction phase.
- *Dorsey Drive Interchange* – A Project Development Team (PDT) meeting was held on November 9, 2006. The Design Team completed analysis of the project scope based on direction from the City of Grass Valley and NCTC in a September 22<sup>nd</sup> meeting. Mr. Bajwa said the City requested that Caltrans look at reducing the width of Dorsey Drive, reduce the proposed height or keep the current height of the overpass, and eliminate realignment of Joerschke Drive. These are proposed changes to the Project Report. The City also asked Caltrans to steepen the cut slopes to reduce impact to the adjacent properties. Mr. Bajwa said he would meet with Executive Director Landon and Grass Valley City Engineer, Tim Kiser, on January 18<sup>th</sup> to discuss the findings, and then give a presentation to the Grass Valley City Council and NCTC at a future date. Once the decision makers and stakeholders have agreed to a planned design, then Caltrans will proceed with the final design of the project. A Value Analysis will be conducted in

February or March, as part of the FHWA (Federal Highway Administration) requirement for projects over \$25 million.

- *SR 49 Five Lane Widening at the La Barr Meadows Road Intersection* – The plan is to improve SR 49 in affordable segments. The La Barr Meadows Road area was chosen due to operational and safety issues. A Project Development Team meeting was held on November 8, 2006 and determined the latest cost estimate for construction is significantly higher than dollars programmed. There is \$4.9 million budgeted for the project. The team is exploring three different options: 1) Maintain the scope that is within programmed dollars of \$4.9 million. 2) Study scope that would cost \$15 million. 3) Maintain the original design of four lanes with center left turn lane, signal at la Barr Meadows Road and frontage roads. Caltrans will develop cost estimates and right-of-way acquisition amounts for the three options. The Environmental Document was ready with the single option, but language will be added within the next few months to include the other two options. FHWA will then review the revised Environmental Document, and the project will be circulated for review and comment sometime around May or June 2007. Project Approval is anticipated in October 2007, and then right-of-way acquisition and design activities can begin.
- *Truckee SR 89 Mousehole* – A Project Development Team meeting was held on November 30, 2006. They are working on completing the environmental phase of the project. Caltrans will seek direction from the Truckee Town Council and NCTC on the best one or two alternatives out of the five alternatives proposed to do further study on.
- *Safety Project to Install a Rumble Strip on the Centerline of SR 49 from Combie/Wolf Road to Grass Valley* – The project began construction on January 7, 2007 and it will be completed by mid to late February, weather permitting.

Commissioner Steele questioned the possibility of lighting the welcome monument on SR 49 with solar lighting. Winder Bajwa stated that Caltrans cannot do that type of project. He said Nevada County can file an application through the Caltrans Permit Department, and the cost and maintenance of the project would be the County's responsibility.

Commissioner Brady congratulated Winder Bajwa for the quick action in getting the rumble strip project approved, funded, and constructed. He commented that it was an example of the government working well for the safety of the community. Chairman Beason also thanked Mr. Bajwa for his efforts.

Commissioner Brady asked if the Environmental Document was completed for the full scope of work on the SR 49/La Barr Meadows Road widening project. Mr. Bajwa said the report was not final but it had already been reviewed by FHWA and they provided comments. He commented that the draft Environmental Document covered the full scope of work, but there is not enough money to build the original project.

#### B. SR 20 Accident Statistics

Robert Peterson, Caltrans Traffic Safety Engineer, prepared a traffic safety report on SR 20, as requested by Commissioner Sutherland at the September 20<sup>th</sup> NCTC meeting. Gary Dossey, a Caltrans representative on behalf of Mr. Peterson, was in attendance at the meeting and explained

the charts provided in a handout. Mr. Dossey reviewed the accident statistics for 2003 through 2005 on SR 20 from the end of the Pet Hill Project (east of Indian Hill Road) to the Grass Valley city limits. He stated that the Average Daily Traffic (ADT) was increasing, and the total number of accidents was the highest in 2004. Commissioner Harris asked if there was any sense of the 2006 statistics as yet. Mr. Doccey responded that the Caltrans system to retrieve accident information is slow and they do not have much data for 2006. Other charts displayed a comparison of SR 20 data with similar highways throughout the State of California, and it showed that SR 20 was below the average total collision rate for the State for all three years.

Chet Krage, a member of Citizens for Highway 49 Safety, mentioned there was a double fatality in 2006, and he cautioned against looking at only three years of data to draw conclusions. He would like to see the 2006 data added and at least two years prior to 2003 added to this report.

Executive Director Landon introduced the new Caltrans District 3 Planning Liaison, Gary Winegar.

### CONSENT ITEMS

7. NCTC Minutes: November 15, 2006. *Approved.*
8. 2005/06 FY Fiscal and Compliance Audits: *Accepted the 2005/06 FY Fiscal and Compliance Audits.*
9. FTA Section 5311 Program Regional Balance Sheet and 2006/07 FY Program of Projects: *Approved the 2006/07 FY Program of Projects.*
10. Disposal of Surplus Equipment: *Adopted Resolution 07-01*

Commissioner Susman made a motion to approve the Consent Calendar. Commissioner Miller seconded the motion. The motion passed unanimously.

### ACTION ITEMS

12. Social Services Transportation Advisory Council (SSTAC)

Executive Director Landon reported that Mr. Woodman contacted the Senior Center for potential membership to the SSTAC, as directed by the Commission in the November 2006 meeting. He indicated that one person from the Senior Center submitted an application and then withdrew it due to some personal issues. Mr. Landon stated that two additional applications were received: Stanley Moscini, who had previously served on the SSTAC when he drove for Gold Country Stage, has since retired and would like to represent transit users who are 60 years of age or older; and Timothy Hughes, who works at the FREED Center, also applied to the SSTAC as a current Gold Country Stage rider, and many of his clients at FREED also use transit. Mr. Landon introduced Mr. Moscini to the Commission and Mr. Moscini stated his willingness to serve on the SSTAC. Mr. Hughes was not in attendance. There was no discussion. Commissioner Harris made a motion to accept the appointments to the SSTAC. Commissioner Susman seconded the motion. The motion passed unanimously.

13. Amendment II to the 2006/07 Overall Work Program (OWP)

Executive Director Landon explained that the OWP is the listing of activities and budgets for the Commission each fiscal year. There were several modifications proposed. Mr. Landon stated the first modification was to add the cost of the Regional Transportation Mitigation Fee (RTMF) Update into the budget, and he noted the funds come from the RTMF fees collected.

Mr. Landon said the second item in the OWP Amendment related to the Crestview Intersection/Interchange project, which NCTC has had in the work program for three years. He reported that NCTC staff was asked to facilitate the project on behalf of the City of Grass Valley, since it was on the edge of the sphere of their influence and it needed coordination between the State and county. The funding came from two major SDA (Special Development Areas) applicants to the City of Grass Valley: Caitlin Properties and Sanderson Company, Inc. They provided approximately \$400,000 for the project, and there is about \$117,000 remaining in the project budget. Mr. Landon said the purpose of this action was to recognize the amount remaining, based on the annual audit.

Chairman Beason welcomed the Commissioners to ask questions or make comments as each item was discussed. Commissioner Brady requested the Commission discuss whether they would want to continue to be the lead agency on the Crestview Intersection/Interchange project, since it could make it appear that NCTC is an advocate of the project. He said he understood why the City would ask NCTC to coordinate a project that is located on SR 49. But he felt NCTC staff was already burdened with a lot of work, and this work is being done for a development that is not even approved. Commissioner Brady commented that the 5% administrative fee seems nominal when the Commissioners desire the NCTC staff to prioritize other work. He requested further dialogue regarding the nature of NCTC being involved in SDA or small development projects and their traffic studies.

Commissioner Miller questioned if there was a practical time for the NCTC to be brought into a project, and was this premature in relation to staff time since this is something that should be better handled by the City of Grass Valley. Executive Director Landon responded that this is a policy question, but he explained that when the project was initiated, the City did not think they had adequate staff to handle the project, and due to the involvement with Caltrans and the County, NCTC staff was asked to lead the project. Mr. Landon explained that the project proceeded to a certain point and then the City of Grass Valley got involved in the discussions of their SDA's. The project was at a point that in order to move the traffic analysis forward, a land use set was needed as a basis for the assumption of how much traffic would be generated. The City Council discussed what they would be willing to allow under their General Plan. That information recently came forward to City staff, and now staff will translate that into direction through NCTC to the consulting team. Executive Director Landon stated if there is a desire by the Commission to reconsider completing the project, the money can be refunded and the project lead can be changed.

Commissioner Miller stated that the City of Grass Valley has not identified the scope of the work to be done on the two SDA's around Crestview, so it makes it difficult to project future plans. Commissioner Susman asked if the NCTC got involved because of the task of updating the County's traffic model and what traffic loads that area could bear. Executive Director Landon responded that was correct; in order to do the traffic modeling, they needed that land use data. Commissioner Susman noted there was a natural segue from the identification of land use into the need for a transportation project. He shared the sentiment of the other Commissioners regarding the NCTC not being lead agency on development generated projects. Commissioner Brady questioned why the private consultant could not do the work NCTC staff is currently doing.

Commissioner Spencer questioned why the project listed in the OWP was “Pine Shadows Trailside”, but the preliminary site map created by the project owner’s engineer used the name “Pine Meadows Trailside”. He asked for verification of the correct name of the project.

Chairman Beason asked for further comment on OWP Work Element 2.2.2 – Crestview Intersection/Interchange Project Report. Chairman Beason shared his concerns about showing the Crestview project and the Pine Shadows project in the NCTC funding balances, because it implies NCTC is taking a position on the projects. He questioned if there were a co-mingling of funds, and if that was appropriate from an accounting point-of-view or from a good management practice point-of-view. He also stated that it was the Commission’s wishes in a previous meeting that staff would invoice Caitlin Properties and Sanderson Company, Inc. for administrative staff time. Executive Director Landon replied that the Caitlin Properties representative was at that NCTC meeting when this was discussed and he offered to pay an administrative fee for NCTC staff time used on the Crestview project. Mr. Landon said an invoice could be sent out asking for payment of an administrative fee. Chairman Beason would like staff to send the Crestview developers an invoice for the time staff has spent on the project. He stated that he does not think this project is an issue for NCTC; it is between the developers and Grass Valley and Caltrans.

Commissioner Spencer cautioned further spending of money on the Crestview project until Grass Valley rules on the Caitlin Properties and Northstar Properties projects; neither project has been approved by the Grass Valley City Council, nor do the projects have final designs or quantity of homes decided. He concurred that NCTC should not spend a lot of time on the Crestview project.

Commissioner Harris asked Executive Director Landon if he has talked with the City of Grass Valley about this project not being something NCTC should be involved in. She wondered if they were aware of this. Mr. Landon stated he has not had a conversation with the City about the possibilities of NCTC’s desire to not continue the lead of the Crestview project. Mr. Landon clarified that there are no NCTC funds being expended on the Crestview project, other than the administrative time that will be invoiced for. The funding for this project came from the developers as a part of the planning process.

Chairman Beason restated the Commission’s comments and concerns regarding the Crestview project: The appearance or perception of NCTC’s involvement with development projects, additional staff time spent on the project, co-mingling of money, and the developer projects not being defined or approved. His perception from others comments is to take the Crestview Intersection/Interchange project from NCTC’s OWP, and allow the interaction to be between the City of Grass Valley and the developers. Commissioner Harris said her concern was whether Grass Valley was ready to take the project on. Commissioner Miller said he didn’t know if the City was ready to take the project, but he thought the question was as to where the developers are in regard to the project, since he perceives they are years away from any specific plan that Grass Valley would get serious about reviewing. Chairman Beason commented was it not just the matter of returning the money to the developers and taking it out of the NCTC OWP. Executive Director Landon responded that the request given to the Commission in the OWP Amendment was to recognize the specific amount of \$117,365 being held, so there is a basis to designate the amount to give back to the developers.

Commissioner Susman asked if there were any assumptions in place for the traffic modeling at Crestview, since that is what generated NCTC’s involvement in the beginning. Executive Director



Landon said there has been a significant amount of work done to the traffic model, and the land use data set is the next piece of information needed. The City's deliberation over the SDA issue held up the land use process. Chairman Beason noted that the City of Grass Valley seems to have more staff now than they did at the time NCTC was asked to lead the project. Also, the City is working on a traffic model that will integrate with the County-wide model. Commissioner Brady asked if there was any reason why NCTC should not or could not extricate themselves from the Crestview project. With regard to the Pine Shadows traffic study, he questioned the precedent of NCTC being involved in traffic reports for subdivisions or developments that there is no definite future set for. Commissioner Miller asked if the Commission should allow the City of Grass Valley to respond to the concerns of the Commission before a decision is made. Commissioner Harris agreed that this was her point also. She thought it important to ask the impact this would have on the City or what their expectations are of NCTC regarding the projects. Commissioner Miller thought it would be good to ask the City why the Commission should not extricate themselves from the project. He would like to allow them to give reasons, if there are any.

Chet Krage addressed NCTC as a former Commissioner. He said the one additional piece of information he would like to add is at the time the decision was made to take the Crestview Intersection/Interchange project under the wing of NCTC, the Commission was involved between Nevada County and Caltrans in looking at the fifty year concept for SR 49. He repeated the issue pointed out by Commissioner Steele of the 145 driveway/encroachments and how to consolidate them, the question of where intersections would be improved, etc. Mr. Krage mentioned the design issues of the Golden Center Freeway with overpasses and the question at the time of whether Crestview would be an intersection or a full interchange. He encouraged the Commission to consider a position as the visionary of SR 49 and how it will look in the future, and the extent of how and to what degree these major proposed subdivisions will influence SR 49 in the coming years.

Chairman Beason asked if it was the sense of the Commission to ask Grass Valley why NCTC should not eliminate Crestview from the OWP. Commissioner Steele suggested the Commission ask the City of Grass Valley to take back the Crestview project, and if they do not want it they can explain to the NCTC why it should not be given to them.

Commissioner Steele made a motion that the Commission give the Crestview Intersection/Interchange project back to the City of Grass Valley, and allow them the opportunity to respond if they do not wish to take it. The motion included direction to staff to bill the developers for the time spent on the Crestview project thus far. Commissioner Brady seconded the motion. The motion passed unanimously.

Chairman Beason recessed the meeting at 10:10 a.m.

Chairman Beason reconvened the meeting at 10:16 a.m. Discussion continued on Agenda Item #13, Amendment II to the FY 2006/07 Overall Work Program.

Chairman Beason opened up discussion on Work Element 2.4.1 – Rural Counties Task Force (RCTF). Commissioner Steele thought it was good that Mike Woodman, NCTC Transportation Planner, get this type of exposure as Chair of the RCTF, but he was concerned about the additional work load and the potential of it taking away from staff time to complete other work. He questioned if there was a need to add to NCTC staff to compensate for the additional work load the Commissioners give. Chairman Beason asked Mr. Landon to comment on what he thought the work load impact might be for Mike Woodman as Chair of the RCTF. Executive Director Landon said he

served in the role as chair several years ago, but he thought the work the Task Force is doing has increased. He sees the need for rural counties to band together and try to make their case at the State level to get additional funding. Mr. Landon thought Commissioner Steele made a good comment regarding the current work load and possible need for additional staff, and he said a proposal could be brought back as to how to approach accomplishing this.

Commissioner Susman sees this as an opportunity to leverage more money that is available, by getting out there and being present and poised for the opportunity. Commissioner Harris agreed that there can be real value in participating at this level. As for the work load, she commented that staff has what she perceives as a “bubble” this year with the RTMF Update, and the Commission’s choice for Executive Director Landon to manage multiple contractors and the extra work that will entail. In addition to looking at adding staff, she wondered if there would be a way to add someone in the short term that could help staff get through this bubble period. Commissioner Harris said she is always concerned about adding headcount, since it is a big semi-fixed cost, so if there are other things needing completion during this busy period she would like to hear proposals about them.

Chairman Beason summarized that it appears to be the consensus of the Commission to approve this item and have Mr. Landon bring back possibilities of how to handle the current staff work load short- and long-term. Commissioner Spencer made a motion to approve Mike Woodman as Chair of the RCTF and for staff to bring back recommendations of how to address their short-term and long-term work load. Commissioner Miller seconded the motion. There was a clarification that the Commissioners were amending the resolutions for the OWP as each item was discussed and voted upon.

Chairman Beason introduced for discussion Work Element 3.1 – Current Local Studies. He gave the background where a developer is contracting for a traffic study with an NCTC consultant. Executive Director Landon explained that the policy of the Commission in the past has been, since NCTC maintains the traffic model, if a particular developer would want to utilize the services of NCTC’s traffic engineer to provide a traffic analysis for their project, it would be necessary for the developer to contract through the NCTC for the work. In 2005 the Commission adopted a resolution that also included an administrative fee of 5% for the NCTC to manage the administrative action, which gave staff the authority to approve those type of contracts, and then bring them back to the Commission at the next regular meeting to include it in the OWP budgeting process.

Commissioner Spencer said when a project is proposed, the project’s engineer prepares a traffic study. He stated, in the case of Pine Shadows Trailside, they are not asking the NCTC to prepare a traffic study. His question was whether they ask NCTC to fulfill a portion of the traffic study to prepare a model for that general area and they then complete it using our data. Executive Director Landon responded that, no, in this case our traffic engineer, PRISM Engineering, has prepared the traffic analysis using our traffic model and put in the land use from this specific subdivision. PRISM does a total traffic study indicating the trips that are created, the intersections that are impacted, etc. Mr. Landon explained further that PRISM Engineering is on retainer with the NCTC, and part of the contract says that Mr. Johnson will not work directly for any private agency in Nevada County; he can work for other public agencies in Nevada County, but in order to do work for developers, it would need to go through the Commission.

Commissioner Brady asked if the developer wrote up the Request For Proposal (RFP) or if NCTC did. Mr. Landon responded that the developer provided a list of information that the City of Grass Valley would need, and then based on that PRISM Engineering prepared the proposal. He said this

is not an RFP; it is a sole source request stating what the City requires and asking PRISM what they would charge to do the work. Commissioner Brady asked what the administrative work is that NCTC provides. Executive Director Landon said staff reviews the scope of work, executes the contract, and pays the bills. Commissioner Brady wondered why the City of Grass Valley does not have a list of approved traffic consultants that a developer could choose from when they propose a project to the city. Mr. Landon said there are other consultants Pine Shadows could have used, but they requested PRISM Engineering provide services. Commissioner Brady asked if Grass Valley prefers developers use PRISM Engineering, to keep traffic reports consistent within the City. Mr. Landon said the City has a process established and any qualified traffic engineer can respond to that on behalf of the applicant. Commissioner Spencer thought PRISM Engineering was involved because they are NCTC's prime contractor for traffic modeling in that area. His opinion is to give developers permission to utilize PRISM's services and then NCTC can stay out of the contract all together.

Commissioner Susman said he thought the discussion of PRISM Engineering's contract availability through NCTC should be a separate discussion of policy issue, and the Commission should discuss the Pine Shadows project separately. His memory is the advantage of using PRISM Engineering is the consistency of data collected and PRISM created and maintains the model using NCTC funds, which is proprietary information. That is why NCTC makes this service available through PRISM. He said this may not be the way the Commission continues to do business. Commissioner Susman said what governs growth in Truckee is traffic and circulation, so if you start using traffic engineers who are not familiar with the traffic model and the zones, you could end up with a lot of conflicting traffic studies. He would be willing to go forward with this particular project, since the NCTC is not promoting a specific development project, and discuss the issue with PRISM Engineering contracts at a later time.

Commissioner Brady said it will be interesting to see Grass Valley's new traffic model created by the new traffic consultant who has done a new set of data and modeling. Chairman Beason agreed with Commissioner Susman that maybe there needs to be an overall policy discussion at a later date and to decide on this issue before the Commission. Commissioner Harris also agreed. Chairman Beason asked if there was a modification to the resolution. Commissioner Susman said he would not modify the resolution in this context. He would request a future work item to clarify policy before another issue like this comes back to the Commission. Chairman Beason requested Executive Director Landon bring back on a future agenda a discussion of the policy regarding PRISM Engineering doing local studies through a contract with the developer and NCTC.

Chairman Beason asked if there was any discussion on the budget tables modifications. Executive Director Landon noted that these are the actions necessary to achieve the direction stated on the first page of the report. Commissioner Miller asked a question regarding Table 3 under insurance, if there was coverage for Directors and Officers. Mr. Landon responded that Directors and Officers coverage is part of the Errors and Omissions policy.

Chairman Beason reviewed that the only modification to Resolution 07-02 would be regarding Work Element 2.2.2, which was previously discussed and moved upon, to ask the City of Grass Valley to take back the Crestview Intersection/Interchange Project, or tell NCTC why they cannot do it. Commissioner Susman made a motion to approve Resolution 07-02 as modified. Commissioner Steele seconded the motion. Executive Director Landon clarified that in Work Element 2.2.2 the budget amount is recognized as part of the budget. Chairman Beason stated the amount would be taken out only if NCTC is removed from the project. The motion passed unanimously.

Commissioner Steele made a motion to approve Resolution 07-03 to allocate \$138,098 from the RTMF account for the RTMF Update project. Commissioner Brady seconded the motion. The motion passed unanimously.

14. Corridor Mobility Improvement Account (CMIA) Program

Executive Director Landon reported that following the November election, in which Proposition 1B was passed, there was \$19.9 billion available for transportation. Of that amount, \$4.5 billion is specifically identified for the CMIA Program. The program guidelines were approved in December by the CTC, and the project nominations were to be submitted to the CTC by January 16<sup>th</sup>. He said in accordance with the eligibility guidelines, Nevada County had only one project that met the criteria for the program, so staff prepared a nomination for SR 49 and listed how this project meets the program criteria. The submittal listed history of the project back to the early 1990's when NCTC was doing planning for that corridor, and the data shows that this project is consistent with the State guidelines. NCTC staff requested Caltrans District 3 submit the SR 49 widening as a partnership project. When District 3 submitted the project to Caltrans Headquarters to be included in a preliminary list for the CTC, Headquarters did not accept the recommendation. NCTC staff submitted the project directly to the CTC to consider for full funding of an additional \$16 million, which would eliminate the deficit on the current project. Mr. Landon noted that the focus of the money in the CMIA Program is intended by the State to be used in the urban areas, but the Rural Counties Task Force was successful in including in the guidelines discussion of geographic equity to ensure areas throughout the State benefit from this statewide bond act. He said he is hopeful that the merits of this project, the accident history on SR 49, the longstanding partnership with the State, and the fact that it is considered an interregional system focused route would prevail on the CTC and they would provide the funding.

Commissioner Spencer questioned who it was at the Caltrans Headquarters that would have made the decision to exclude this project from their list to the CTC. Executive Director Landon replied that Caltrans is a large bureaucracy, but the ultimate responsibility goes to the Director of Caltrans, Will Kempton. Commissioner Spencer asked if Caltrans said why they turned down the project. Mr. Landon said the listing that was sent from Caltrans District 3 ranked this project as fourth or fifth within the district's priorities, and when Headquarters looked at the list of thirteen projects submitted by District 3, they selected nine. He said all the projects they selected, with one exception, were within the freeway corridors of the Greater Sacramento area. The one project not in the Sacramento area was the Lincoln Bypass, which is a \$65-70 million project that has been starving for funding for twenty years. Mr. Landon said there was no explanation as to the basis for their choices. Commissioner Spencer asked if it was a committee that reviewed the lists and made their selections. Mr. Landon said he would assume it was done by a committee internal to Caltrans, but it was not an open process. He said he is not real optimistic of the statement that the CTC made through their director indicating that the Caltrans list is the Caltrans list, and the CTC is not bound by their list.

Chairman Beason suggested that Executive Director Landon and he go to Marysville to meet with Caltrans staff there, and then go to Sacramento. Commissioner Spencer said he would like to know specific names of the people at Caltrans who make up these types of committees that review and make recommendations of which projects to fund. He is concerned that projects like the Dorsey Drive Interchange and improvements on SR 49 get strung out and the cost to construct them keeps going up, and there is no additional money to fund them, so the project scope gets cut back.

Chet Krage, Citizens for SR 49 Safety, agreed with the comments of Commissioner Spencer. Their group's focus is how to influence the CTC for their February 28<sup>th</sup> meeting. Mr. Krage strongly suggested that Assemblyman Keene and Senator Aanestad could be helpful, since his group met with these two men a number of times and their comment was to have a project ready to go that they could assist with statements to Caltrans and the CTC. He thought a position letter from the Commission and also possibly from the jurisdictions within the county would be helpful. Mr. Krage offered parallel efforts of support from their citizens group. Chairman Beason stated that Commissioner Spencer has done a lot of work to move things forward on SR 49, and Mr. Krage's points were well taken. Mr. Krage said he thought the community needed some information on this project, because in the past there was heavy interaction about right-of-way and design, and Caltrans held public meetings, but recently there has not been much information on this project other than the rumors that it is going to cost too much.

Chairman Beason said there appeared to be a need to communicate with the state to get people that represent Nevada County to do things at the State level. Commissioner Susman said not only is Mr. Landon respected as the Executive Director of the NCTC, but he liked the idea of the participation of the Commissioners as elected officials. He encouraged the NCTC to send a follow-up letter to the CTC stating the Commission met after the submission of the document and reinforce its support, as well as any individual lobbying efforts that could be done. Chairman Beason stated if the Commission just keeps sending staff to lobby and the elected do not show up or weigh in or communicate, they will not think the County is serious about results. He believes the strategy is widespread, to include himself and Mr. Landon talk to people in Marysville and Sacramento; get local legislators involved; use letters from the public to carry more clout; and have the Commission coordinate all these efforts. Chairman Beason asked the Commission if there were any opposition to having staff draft a letter, he would sign it, and it would be mailed out before the February 28<sup>th</sup> deadline for the CMIA hearings. Commissioner Spencer said he would like to schedule a meeting with several Commissioners and other highly involved individuals from the county to meet with Caltrans and get some answers as to why the County's projects get delayed and cost more, and why nothing is getting done in the County. Chairman Beason said the La Barr Meadows widening project is turning into another Dorsey Drive project, in terms of time and cost.

Commissioner Susman saw this time as a segue to introduce Truckee's most recent councilwoman, Carolyn Wallace Dee. He said the Town Council had actually agreed to have her be his successor on NCTC, but the decision is being delayed currently because Ms. Dee is seeking an appointment from the governor's office to sit on the CTC. He said she has a variety of experience and exposure and substantial connections at the State and Federal level. Commissioner Susman stated there has not been significant representation of rural counties since Ed Sylvester of Nevada County sat on the CTC, and there is currently a lack of Northern California representation on the CTC. He believes this is a good way to get more recognition as a rural county at the State level, and this is a way they are pursuing to facilitate that exposure.

Commissioner Susman stated that due to the timing of Ms. Dee's application to the CTC, he asked NCTC to write a letter of support to endorse her nomination to the CTC. Commissioner Spencer requested the Commission see a biographical sketch on Ms. Dee first. Commissioner Susman asked that the Commission not wait until the March meeting to send a letter of support, because it would be beyond the nomination and appointment timeframe.

Chairman Beason said he will look into putting together a small group from the local community that may want to either talk to the Caltrans staff in Marysville or Caltrans Headquarters and the CTC in Sacramento. He said three Commissioners could attend these meetings without being in violation of the Brown Act, and then possibly additional representation from the county and the cities/town. Commissioner Steele said since the CTC mentioned the Caltrans list is the Caltrans list for the CMIA nominations, he thought it would be best to talk directly to the CTC, and express our dissatisfaction of the oversights throughout the years as a rural county and how our projects need help from the CTC. Executive Director Landon suggested the meetings start in Marysville to understand the structure of Caltrans and seek an opportunity to influence the decision.

Commissioner Susman made a motion to ratify the Corridor Mobility Improvement Account project nomination and to direct Chairman Beason to sign a letter to the Governor to consider the application of Carolyn Wallace Dee to the CTC. The motion passed unanimously.

15. Request from Greg Bickett of Bickett Engineering, Inc. for Contract Amendment and Payment of Final Invoice

Chairman Beason invited Greg Bickett of Bickett Engineering, Inc. (BEI) to speak on behalf of his request to the Commission regarding additional payment for work completed on the Grass Valley Corridor Improvement Project (GVCIP).

Greg Bickett shared that one of the items that was omitted in Executive Director Landon's report on the subject was all of the effort Mr. Bickett had pursued to get the Contract Amendment understood and out there in the public. He said that the last meeting he had was in or around October 2005 (he did not remember the exact date), when the Nevada County Contractors' Association (NCCA) on BEI's behalf held a joint meeting that was attended by Mr. Bickett, Doug Hobbs of BEI, and another member of BEI's staff; NCCA's members Barbara Bashall and Keoni Allen; there were supposed to be two people from the Grass Valley City Council; and Tim Brady, an NCTC Commissioner and NCCA representative. Mr. Bickett said at that meeting they discussed the current issues as well as the Contract Amendment costs. He thought there was a lot of confusion experienced at the end of the contract. He submitted the proposals and worked out the solutions, and then BEI presented them to the City of Grass Valley. He stated that at that point in time, which was July, there was a change in direction. Mr. Bickett said the July 8, 2005 invoice from BEI to NCTC indicated that he was at contract budget of \$215,000.

Mr. Bickett continued to explain that at that time the City of Grass Valley asked BEI to go back and redevelop a new intersection alternative that was out of scope, which was the single lane roundabout alternative. He said there was a meeting in the BEI offices, subsequent to the City's new direction, to discuss what to do: 1) They are out of budget. 2) This is a new alternative that is out of scope. 3) There was a funding deadline of September with Caltrans to receive 50% SHOPP (State Highway Operations and Protection program) funding for the entire project, to include development, PS&E (Plans, Specifications and Estimates), and construction, minus right-of-way acquisition. He said they were at a quandary, whether to decide to do nothing and just let the project pass, since there was a funding limitation. Mr. Bickett said he discussed with NCTC Executive Director Landon over the phone that he would step forward, using the surety of the \$960,000 contract, and go ahead to provide these services and carry them until they were approved.

Mr. Bickett reported that three months later two things happened. There were private meetings with the City of Grass Valley and Mr. Landon that he was not part of, regarding status of the contract and

new direction. And then Mr. Bickett got sick and was in the hospital for five months, and ended up being “out of pocket” for the extra work performed. When he came back to work, there was an RFP (Request For Proposal) for the design of the project, minus all the corridor improvements. He tried three ways to get paid: He was asked to be a subconsultant on one of the other teams; he was going to provide all of the mapping, which is the information he had. The cost of that mapping was the amount outstanding on the invoice on the out-of-scope work (\$26,650).

Mr. Bickett asked for clarification of Section 11 of the Professional Services Agreement, which states that termination for convenience starts with a letter from the project manager, Dan Landon, stating that the Agreement is being terminated. He said that never occurred. According to the Agreement, at that time the Consultant is to provide a final invoice. He explained that since he never received a letter terminating the Agreement, he feels there is a breach of contract. His course of action, according to the terms of the Agreement, is arbitration for the outstanding invoice if it is being contested by Mr. Landon, and another course of action is mediation if needed. Mr. Bickett contests that he has never received a letter terminating the Agreement, and he did not abandon the Agreement.

Now that he is healthy and back to work, Mr. Bickett is asking the NCTC to consider an amendment to the Agreement. He noted that Mr. Landon is not contesting that BEI did complete work out-of-scope on several issues. He said the new project is basically doing what BEI drew up and designed, minus the corridor improvements, so there was nothing wrong about the work completed, and he is proud of the work completed with Mr. Landon and BEI’s staff.

Chairman Beason asked Executive Director Landon to comment. Mr. Landon confirmed that BEI did additional work, and in July 2005 there was the surety of the multiphase contract. Then in August, as the funding was completed for the first phase, the original intent of the Agreement was to go into a second phase. That assumed two things: 1) The successful completion of Phase 1. Mr. Landon believes that was achieved. 2) Budget and concurrence from the RTMF Program and the member agencies. Mr. Landon stated that part was never achieved, so the NCTC was unable to proceed further. Chairman Beason said that this might be more of an issue between BEI and the City of Grass Valley. Mr. Bickett replied that the City of Grass Valley is not his contract partner; NCTC is.

Mr. Bickett, referring to the October 2005 meeting, stated that the last meeting had a representative from the City of Grass Valley Council (two representatives were intended, but Patti Ingram was ill), as well as Tim Brady of the NCTC. He said the main focus of that meeting was to insure that BEI had not done anything wrong, since he had heard rumors on the street that BEI would not be selected to continue with the project because they had done something wrong. The other contract issues were also discussed at this meeting among the various representatives. He restated that he kept his part of the Agreement, and he never received a letter terminating the Agreement so he has not been given an opportunity to submit a final invoice. He said if the invoice is contested, then there is arbitration to indicate what is wrong with that final invoice and what work BEI did substandard, and then mediation after that. Mr. Bickett said it is not his intent to go there.

Commissioner Spencer recused himself on the vote, and stepped down from the dais.

Commissioner Susman said there appears to be issues based on what is “right” and what is “legal”, and also the issue of public trust as far as dealing with the Agreement. He quoted Section 9 of the Agreement that states: “... a total sum not to exceed \$215,276,” and he said if consideration was

made that the costs were approaching the ceiling sum agreed upon, then there was a mutual responsibility that Mr. Bickett had prior to the exceedance of that amount. He also read the Agreement section that states: "The Consultant and NCTC shall each designate a project representative who will be totally responsible in coordinating the efforts ...," so that begs the question of, with all these different changes and modifications to the approved NCTC scope of work, who is initiating these changes that were running up the bill? Commissioner Susman said Mr. Bickett admitted that he was out of the picture for five months with illness, so if he was the initial designated representative, there was obviously a different designee during the five months of his absence, and the representatives can only be changed upon mutual agreement by NCTC and the Consultant. He said there are many legal questions and he doesn't believe anyone wants to go there. Mr. Bickett responded, "No sir."

Commissioner Susman stated he is challenged not for what he wants to do that is right, but for what he thinks he has to do to represent the trust that has been bestowed upon him as an NCTC Commissioner, so he is torn. He has not heard anything as yet which would cause him to decide one way or another. He questioned who engaged the conversations that initiated the work on the additional project alternatives that ran up the bill for out-of-scope work. Commissioner Susman said if the directive for the additional work was initiated from Mr. Landon, then he would be willing to accept more responsibility. But if the initiative came from discussions with the City of Grass Valley and the fact that they did not know what they wanted to do, then it comes down to the question of who is the responsible party. Mr. Bickett responded that he took all of his directions from Mr. Landon. He said the meeting he had was with the City of Grass Valley, and Mr. Landon was representing the City, so that put him in a middle position; and then he worked directly for Mr. Landon. Mr. Bickett said the City of Grass Valley changed their direction at the end, which was also at the end of the \$215,000, and he had budgeted that money to get the most work completed for that amount to solve the problem. Then the City changed the direction and required BEI to go back and redesign the intersection improvements to try to minimize the right-of-way impacts. Mr. Bickett stated that the City was balking at the right-of-way impacts, even though they knew about them for two contracts, since the second contract defined what they were. He got his direction from Mr. Landon, and he brought up the fact that the end of the budgeted money had been reached. With the question of how to go further and to get onto the Caltrans SHOPP funding, there were two crucial decisions: 1) To get the project into Caltrans for SHOPP funding at 50%, that would have gotten Mr. Bickett paid. The RTMF Program did not have the money at that time to pay him. Mr. Bickett bridged the gap under the surety of the Agreement of \$960,000. Three months later he heard that the City of Grass Valley was taking over the project, that BEI was not going forward with the project, and that the City was going out in a different direction.

Chairman Beason asked when the City took over the project. Executive Director Landon responded that it was in August 2005. He said the general tenure of what Mr. Bickett has been saying is correct, but Mr. Landon said that is why he made it clear in July 2005 that they were approaching the budget constraint. Mr. Landon stated that if at any time BEI would have said they were not comfortable going forward and they would not do anymore work until they had further surety of payment, everything would have stopped at that point. Mr. Landon said there was never a "direction" that BEI must do the work.

Commissioner Brady said this is the end point of a relationship with Mr. Bickett, and it would be a disservice to not go back and acknowledge the fantastic work that BEI did for the project throughout that period of time. He said that the Commissioners who were on the NCTC at that time remember the many different directions that the Grass Valley Corridor Improvement Project went, with the



devils triangle, and with the bypass/overpass; all of the alternate view points directed by Caltrans continually, and Mr. Bickett's rapid response to all of those problems, plus his continual zeal and effort in solving them. Commissioner Brady stated Mr. Bickett showed exemplary effort in going to the State and trying to get the 50% SHOPP money for both the devils triangle and the bypass. He said all the work BEI did was fantastic. He felt the money was not squandered because, after all of this effort, Caltrans came back and approved a single lane roundabout and said that it won't interrupt the weave. He said the City made the decision, because they didn't have the money to do the entire project, so the City decided to build the \$1.5 million roundabout and let Caltrans deal with the weave when the problem arises. He said that was the conclusion when the shift from the NCTC to the City of Grass Valley was made. Chairman Beason said there was no disagreement on the quality of BEI's work.

Commissioner Brady said when you get down to contract laws and contract facts, he agreed with Commissioner Susman's statement that there is a right way and then there is what can be done as a Commission. He said he saw a verbal announcement that the work was going over budget, but he does not see a direct request for approval to go over budget. He also does not see an authorization from Mr. Landon to go over budget. So as a board, they have to follow the guidance of legal counsel that NCTC has, and follow the guidance of NCTC's Executive Director Daniel Landon. He did not feel the Commission could set itself up as the judge and jury of those facts. When he heard Mr. Bickett say that Grass Valley requested BEI look at another alternative and they went to that point, he thought that certainly would have been the stopping point or the point where BEI would have asked for a change directive from NCTC to go outside the scope of work and to receive funding for that. He thought BEI should not have taken the assumption of the surety of the prime Agreement. Commissioner Brady agreed with Commissioner Susman and said that he did not think the NCTC could decide outside of the findings of either legal counsel or Mr. Landon. He did not feel that was in the jurisdiction of the Commissioners.

Commissioner Harris said she just administered a \$1.5 million contract in private industry, and in that situation there is some give and take, and you can look at what is right and what is appropriate. She does feel it is different when dealing with government entities, and for the NCTC Commissioners she feels there is a fiduciary obligation that overrides the ability to simply look at the contract from a perspective of right and wrong. She believes there is a need to take into consideration the legal aspects of this situation and listen to the counsel provided, and not step outside of the realm of responsibility as Commissioners.

Commissioner Miller said he felt at a disadvantage because he did not have the history of the Agreement, but it appeared that when the City of Grass Valley requested BEI to go outside of the scope, or BEI realized they were going outside of the scope, that would have been a huge red flag. He said to step outside of the scope without contract language being in place, created a liability for BEI. At the same time, it does not place an obligation on the City of Grass Valley to provide additional funds. Commissioner Miller said he mirrors the sentiments of Commissioners Susman, Brady and Harris. He is sympathetic to Mr. Bickett's situation, but in looking at the emails and the activities portrayed, to him there was a definite red flag and indicated a time for BEI to drop back and take a look at where they were with the contract, and question who had the authority to ask BEI to step outside and do things that were not in the original Agreement. He said this is where BEI finds itself and it is an unfortunate position.

Commissioner Steele said he was impressed with the work BEI did, but having been a contractor with government agencies, he said you do not do anything until you get the change order signed and approved. He sided with the Commission that they could not step outside of their boundaries.

Commissioner Miller said he would like to address Grass Valley as to under what authority they could request additional work outside the original contract language. Chairman Beason said that is a question that goes outside of this single issue.

Greg Bickett said Grass Valley's request went to the project manager and then to him. He said that was the chain of events that came through. Although he said he agrees that he did not specifically write a letter saying that he was out-of-scope and they were going to stop any additional work. Mr. Bickett said it was completely discussed, and then he made a decision to push the project one step further to get it back into the funding by the September deadline. He said he stepped in to help this community because he is a part of the community. Chairman Beason said that people are appreciative of that point.

Commissioner Susman repeated that he started out by saying there can be a difference between what is legal versus what is right, and he is sympathetic to this situation. He said that in looking back at the Agreement and the subsequent dialogue, his experience with contracts over the eleven years of government is that there is usually a contingency built into them. He doesn't know what discretion the NCTC has, and if the Commission is looking for what is right versus what is legal based on the Agreement, and the fiduciary responsibilities to those who put them on the Commission. He would be willing to entertain the discussion, if the Commission would want to belabor this, because of the work received and deliverables, that there was not a contingency that was discussed in the initial Agreement and how there is an appropriateness of a contingency. He said if the Commission were to take the liberty to exercise any discretion at all, he would be willing to discuss that as well.

Chairman Beason appreciated that thought. He would like to bring forward to the Commission, soon, a review of NCTC's contracting process. In ten months there have been three contracts involving a tri-part agreement involving the Commission, the City of Grass Valley, and some other entity that have had difficulties and they have all been associated with the RTMF Program. Chairman Beason said there are individuals who are concerned about the RTMF cash flow, and the NCTC has found itself in situations where one of the parties to the contract takes the lead and then these types of situations occur. He stated that despite BEI's good work and the fact they are good people, he believes the NCTC is legally bound to be a good steward of the taxpayer's money, and the RTMF funds are taxpayer's money. He feels there is no choice but to take the staff recommendation. He said in a small community the danger is always when you become familiar and friendly, people start assuming certain things, and the projects need to remain more businesslike and legal going forward.

Greg Bickett stated that he is bound by the Agreement as well as the NCTC. He said the Agreement states that to terminate for convenience starts with the NCTC, and BEI is to respond with the closing invoices as stated in Section 11 of the Agreement. He said he has consulted with his business attorneys and their opinion is that there is a breach of contract issue, so there is two different opinions. Mr. Bickett said what he would like to do is follow through with one of the suggestions, which was to find out where the two parties are in the middle since the law is not always straight. He reiterated Section 11 says he is to receive a written notice that the Agreement is terminated, he is to respond with an invoice; if the invoice is contested, then there is arbitration; none of that happened.

Mr. Bickett proposed to discuss this from a legal point of view, and confirm NCTC Counsel's position. He said he would accept this if NCTC's Counsel and his attorney would discuss the situation to see where their joint opinion is. He would like to bring to light that Executive Director Landon did not tell his counsel that Mr. Bickett had a meeting with Board and Council people – specifically Tim Brady and Lisa Swarthout. He stated there were “contract people” at the meeting to discuss the situation.

Chairman Beason asked Executive Director Landon if he had further comments. Mr. Landon responded that he would receive direction from the Commission on the issue.

Chairman Beason asked for further comments from the Commission. When there were none, he asked for a motion from the Commission. No one responded. He read the recommendation from the NCTC staff, which states to not amend the Agreement to allow for further payment. Commissioner Brady stated he did not think the Commissioners had the authority to amend the Agreement. Commissioner Susman said he would like to hear directly from Grass Valley on this, to obtain some accountability with Grass Valley. He questioned if there were any staff still at the City that were involved during the contract work with BEI. Chairman Beason replied that the change in the lead agency on the Agreement took place around the time Tim Kiser was hired at the City, and he possibly has more information to add. Commissioner Susman asked in light of county cooperation, did the Commission want to direct Executive Director Landon to contact Grass Valley and bring back a formal response from the Grass Valley Council with regards to this outstanding debt. Mr. Landon asked if the Commission would like the NCTC attorney to discuss this further with Mr. Bickett's attorney. Commissioner Susman responded that he believes the NCTC is still bound to the same responsibility for public funds. Chairman Beason said he is sympathetic to the case, but public funds are what they are and the Commission has a certain responsibility. Commissioner Brady said that Mr. Bickett would be free to have his attorney speak to NCTC's attorney without a motion from the Board.

Commissioner Steele made a motion that this item be continued, that the legal counsels discuss this, and he asked for a formal response from Grass Valley regarding their position on the request. This item will be brought forward at a future meeting. Commissioner Miller seconded the motion. The motion passed unanimously.

Commissioner Spencer returned to the dais.

#### PUBLIC COMMENT

There was no public comment.

#### COMMISSION ANNOUNCEMENTS

Commissioner Steele commented that he heard a reference to competing traffic models between PRISM Engineering and the work Fehr and Peers is doing for the City of Grass Valley. He said he would like the Commission to discuss this sometime, if there is a potential conflict between Grass Valley's traffic model and the current traffic model created by PRISM Engineering. Commissioner Brady requested Executive Director Landon give the Commission a report on this. Mr. Landon replied that for point of clarification, the City of Grass Valley indicated they would work with us and we are coordinating our data bases to ensure we are using the same data. Chairman Beason

requested Mr. Landon include the information in the Executive Director's Report. Commissioner Steele wants to know how we are making sure that when a conflict arises, it is getting resolved.

Commissioner Brady complimented staff on the concise and accurate account of the NCTC meeting discussions in the minutes.

Commissioner Susman asked Ms. Dee when the positions become available on the CTC. She responded that three chairs become available on February 1<sup>st</sup>.

Chairman Beason welcomed the new members to the NCTC: John Spencer representing Nevada County, Dan Miller as Grass Valley's alternate, and Chauncey Poston as the new representative for the City of Grass Valley.

Chairman Beason stressed that the RTMF Update is a priority and goal that must be completed without delay. He said that safety on SR 49 and SR 20 are very important, and he includes the Dorsey Drive Interchange with those. He reiterated that it is important for the elected officials and policy makers to get more involved in these efforts. Chairman Beason also said he would like to improve the communications between the policy level at the NCTC and the policy level at the State, whether in Marysville or Sacramento. He believes there is work to do. He would like to work on the communication between the staff and the Commission, especially as it relates to the three contracts in the past ten months that are causing issues for the NCTC. He will ask the Executive Director to bring back to the Commission on an agenda the opportunity to discuss the contracting policy.

#### SCHEDULE FOR NEXT MEETING

The next regularly scheduled Commission meeting is on Wednesday, March 21, 2007 at 8:30 a.m., at the Nevada County Board of Supervisors Chambers, 950 Maidu Avenue, Nevada City, CA.

#### ADJOURNMENT OF MEETING

Chairman Beason adjourned the meeting at 11:27 a.m.

Respectfully submitted: \_\_\_\_\_  
Antoinette Perry, Administrative Assistant

Approved on: \_\_\_\_\_

By: \_\_\_\_\_  
Nathan H. Beason, Chairman  
Nevada County Transportation Commission